

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA . CRIMINAL NO. 11-10331-RGS
V. . BOSTON, MASSACHUSETTS
REZWAN FERDAUS . NOVEMBER 4, 2011
Defendant .
.

TRANSCRIPT OF DETENTION HEARING
BEFORE THE HONORABLE TIMOTHY S. HILLMAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the government: UNITED STATES ATTORNEY'S OFFICE
BY: B. Stephanie Siegmann, Esq.
One Courthouse Way, Suite 9200
Boston, MA 02210
617-748-3100

For the defendant: Federal Defender Office
BY: Miriam Conrad, Esq.
Catherine Byrne, Esq.
51 Sleeper Street, Fifth Floor
Boston, MA 02210
617-223-8061
miriam_conrad@fd.org
catherine_byrne@fd.org

Court Reporter:

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

MARYANN V. YOUNG
Certified Court Transcriber
Wrentham, MA 02093
(508) 384-2003

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
------------------	---------------	--------------	-----------------	----------------

Government's:

Bradley Davis	4	49		
---------------	---	----	--	--

<u>EXHIBITS</u>	<u>DESCRIPTION</u>	<u>IN EVIDENCE</u>
-----------------	--------------------	--------------------

Government's:

1	Complaint Affidavit	13
2	CD of Consensual Recordings	15
3	Indictment	24
4	Attack Plan provided 5/5/11	27
5	Attack Plan provided 6/9/11	27
6	Email from Defendant's Gmail	
7	Email from Defendant's Gmail	
8	CD - Training Video	41
9	Photo of Inside of Framingham Storage	46
10	Photo of Inside of Framingham Storage	46
11	Photo of Inside of Framingham Storage	46

1 CASE CALLED INTO SESSION

2 (2:13:40)

3 THE CLERK: Timothy S. Hillman presiding. Today's
4 date is November 4, 2011 in the case of USA v. Rezwan Ferdaus,
5 Criminal Action No. 11-10331. Counsel; please identify
6 yourself for the record.

7 MR. CABELL: Good afternoon, Your Honor, Donald
8 Cabell for the government.

9 MS. SIEGMANN: Good afternoon, Your Honor, Stephanie
10 Siegmann for the United States.

11 THE COURT: Good afternoon.

12 MS. CONRAD: Good afternoon, Your Honor, Miriam
13 Conrad for Mr. Ferdaus. With me is Ms. Byrne, Catherine Byrne
14 form the Federal Defender Office and with Your Honor's
15 permission Michael Gibbons who is a paralegal in our office. I
16 was going to say and is also a member of the Bar but he hasn't
17 been sworn in yet so.

18 THE COURT: Know him well and he's very welcome.

19 Okay, you may proceed.

20 MS. SIEGMANN: Your Honor, the government calls
21 Special Agent Bradley Davis to the witness stand.

22 GOVERNMENT WITNESS, BRADLEY DAVIS, SWORN

23 THE CLERK: Please be seated. Could you state your
24 name and spell your last name for the record.

25 MR. DAVIS: Yes. My full name is Bradley Davis,

1 D-A-V-I-S.

2 DIRECT EXAMINATION

3 BY MS. SIEGMANN:

4 Q. Could you please state your occupation for the record?

5 A. Yes. I'm a supervisory special agent for the FBI in
6 Boston.

7 Q. How long have you worked for the FBI?

8 A. Over 16 years.

9 Q What is your present assignment?

10 A. I'm a supervisory special agent of a domestic terrorism
11 squad in the JTTF.

12 Q. You just mentioned JTTF. What is the - and that stands
13 for what?

14 A. Joint Terrorism Task Force.

15 Q. Can you explain what the Joint Terrorism Task Force is to
16 the Judge, please?

17 A. Yes. Your Honor, the Joint Terrorism Task Force is a
18 group of, a multiagency group who investigate terrorism
19 matters.

20 Q. Who sits on the JTTF?

21 A. Multiple law enforcement agencies. Both or state,
22 federal, local agencies are all on the Joint Terrorism Task
23 Force.

24 Q. What is your responsibilities as a supervisory special
25 agent of a squad assigned to the JTTF?

1 A. I'm responsible for the supervision of investigative
2 activities of special agents and task force officers regarding
3 terrorism investigations.

4 Q. Are there any specific units that fall under your
5 supervision?

6 A. Yes, I also supervise the special agent bomb tech program
7 and the evidence response team program in the FBI Boston
8 office.

9 Q. Now before becoming a - well how long have you served as a
10 supervisor of the Joint Terrorism Task Force, one of the
11 squads of the Joint Terrorism Task Force?

12 A. Mmm-hmm. I've been in, serving in that capacity for two
13 years now.

14 Q. And before becoming a supervisor involved in the JTTF did
15 you actually investigate terrorism cases?

16 A. Yes, I did.

17 Q. For how long have you done that?

18 A. Approximately 11 years.

19 Q. Have you received training on how to conduct terrorism
20 investigations?

21 A. Yes, I have.

22 Q. Have you received training on the use of undercover agents
23 and employees to investigate terrorism targets?

24 A. Yes, I have.

25 Q. Have you been involved in the investigation of the

1 defendant Rezwan Ferdaus?

2 A. Yes, I was.

3 Q. When did you first become involved in this investigation?

4 A. Approximately February of 2011 I was first provided
5 information regarding this case.

6 Q. And since February of 2011 have you been consulted in this
7 investigation and briefed upon its developments?

8 A. I have, yes.

9 Q. During the pendency - well you mentioned a few minutes ago
10 two squads, I'm sorry, two units that you supervise. Can you
11 mention those again?

12 A. Yes, the special agent bomb tech program, bomb technician
13 program which is akin to bomb squads that state and local
14 agencies have. They investigate actual or suspected devices,
15 explosive devices. And the other unit is the evidence response
16 team which is a team who, that collect evidence from crime
17 scenes.

18 Q. Were those two units involved at all in this
19 investigation?

20 A. They were, yes.

21 Q. Could you explain how they were involved?

22 A. Sure. The special agent bomb techs were involved in the
23 production of explosive material and grenades for production on
24 the date of arrest of the defendant. And the evidence response
25 team was also involved on the date of the arrest in the

1 collection of evidence from both the Framingham stores
2 location and the residence.

3 Q. Now with regards to there was some detonation devices.
4 Can you explain with regards to the defendant what if at all
5 involvement the bomb techs had in that aspect of the
6 investigation?

7 A. They--

8 THE COURT: Agent Davis, can you just move back from
9 the microphone--

10 THE WITNESS: Oh, I'm sorry.

11 THE COURT: --just a minute.

12 THE WITNESS: Sure.

13 THE COURT: Thank you.

14 A. After learning of the potential use of cellular telephones
15 as detonation device or a component of a detonation device--

16 BY MS. SIEGMANN:

17 Q. Well stopping you there.

18 A. Sure.

19 Q. What at all do you know about the construction or the
20 development of cell phone detonation devices? I mean what role
21 did that play in this investigation?

22 A. Cellular telephone was introduced by the defendant in this
23 investigation as using it as a detonation device.

24 Q. Did he in fact construct such devices?

25 A. Yes, he did.

1 Q. How many?

2 A. Approximately 12.

3 Q. And what happened to those devices after he constructed
4 them?

5 A. They were provided to undercover employees.

6 Q. And with regards to the bomb techs what did they do with
7 them?

8 A. They looked at the possible capability of such a device
9 and in doing so they actually put together a similar device.
10 They used a similar practice and when they constructed it they
11 came to the conclusion that it could actually be used--

12 MS. CONRAD: Objection.

13 THE COURT: Sustained. Let's not have a narrative.

14 MS. SIEGMANN: I'm sorry?

15 THE COURT: Let's not have a narrative. Let's--

16 MS. SIEGMANN: Okay.

17 BY MS. SIEGMANN:

18 Q. So, I'm sorry, so the bomb techs were able to - with
19 regards to--

20 THE COURT: Let's have a question, please.

21 MS. SIEGMANN: Yes, Your Honor.

22 BY MS. SIEGMANN:

23 Q. With regards to the devices that Mr. Ferdaus built were
24 the bomb techs able to ascertain whether those devices would
25 work?

1 MS. CONRAD: Objection.

2 THE COURT: What's your objection in a word?

3 MS. CONRAD: Could it be five words? One is
4 foundation. Basically that's his expert opinion being offered
5 through another witness. Second, and it may just be that I
6 haven't managed to look at every single piece of paper that
7 we've received so far, but I don't think we've received any
8 discovery on this so for this witness who hasn't been qualified
9 as an expert in this area to be offering secondhand expert
10 opinion on capability I would object to.

11 MS. SIEGMANN: Your Honor, it's actually--

12 THE COURT: Wait, wait--

13 MS. SIEGMANN: I'm sorry.

14 THE COURT: Wait. Let's - I want to do this one at a
15 time please. So what I'm going to ask you to do is I'm going
16 to sustain the objection and I'm going to ask you to lay a
17 foundation as to what his source of information is and then
18 we'll revisit the objection if you are not satisfied and then
19 we can parse through this on a question by question basis.

20 BY MS. SIEGMANN:

21 Q. Special Agent Davis, you indicated a few minutes ago that
22 you supervise the bomb tech squad at the FBI?

23 A. Correct.

24 Q. As part of your supervision do you have conversations with
25 those bomb techs that were involved in the, in this

1 investigation?

2 A. I did.

3 Q. And during those conversations did they relay to you some
4 of the research and the analysis they had performed--

5 A. Yes.

6 Q. --in this investigation?

7 A. Yes, they did.

8 Q. Was information also provided to the agents that put
9 together the affidavit, the complaint affidavit in this case?

10 A. Yes, it was.

11 Q. And is it part of the complaint affidavit in this case?

12 A. Yes.

13 Q. Now, and now turning to my question with regards to the
14 cell phone detonation devices that the defendant built and
15 provided to the undercover agents was any analysis done to see
16 whether those would in fact work as he intended?

17 A. Yes, there was.

18 Q. And what was the determination of the bomb techs?

19 MS. CONRAD: Objection.

20 THE COURT: Overruled. You may answer.

21 A. The determination of the bomb techs in Boston were that
22 the device would function to provide an electrical impetus to
23 and improvise an explosive device.

24 BY MS. SIEGMANN:

25 Q. Now you indicated also that you supervise the evidence

1 recovery team?

2 A. Evidence response team, yes.

3 THE COURT: I'm sorry, the what?

4 BY MS. SIEGMANN:

5 Q. Evidence response team. And again what was the role that
6 they played in this case?

7 A. They were present on September 28 following the arrest of
8 Mr. Ferdaus. They collected evidence at both the Framingham
9 storage location and also the residence of Mr. Ferdaus.

10 Q. Were you involved in the arrest and criminal searches
11 conducted on the date of his arrest on September 28, 2011?

12 A. Yes. I was on scene in Framing - actually both locations
13 for a period of time both mostly in the Framingham location as
14 an on-scene commander, if you will, for that operation to
15 oversee logistics of the bomb techs and also the evidence
16 response team response to the arrest and search.

17 Q. At this time I'm going to show you Government Exhibit No.
18 1.

19 THE COURT: Do you all - just so that I can stay on
20 top of this have you, do you all have correspondingly numbered
21 exhibits?

22 MS. SIEGMANN: I provided a complete copy of all the
23 exhibits I'm going to use.

24 THE COURT: That you intend to offer?

25 MS. SIEGMANN: Yes. Yes.

1 THE COURT: Okay.

2 MS. SIEGMANN: To the defense prior to the hearing.

3 THE COURT: You have those?

4 MS. CONRAD: I do.

5 THE COURT: Okay. Thank you.

6 BY MS. SIEGMANN:

7 Q. Special Agent Davis, do you recognize what I just handed
8 you which has been marked Government Exhibit 1?

9 A. I do.

10 Q. What is it?

11 A. It is the complaint affidavit.

12 Q. Who signed this affidavit?

13 A. Supervisory Special Agent Gary Cacase (ph).

14 Q. And do you know who that is?

15 A. I do. He's the supervisor of the FBI Boston's Worcester
16 Resident Agency Office.

17 Q. How often do you interact with Special Agent Cacase?

18 A. Weekly.

19 Q. Have you read this affidavit?

20 A. I have.

21 Q. Are you familiar with the facts described in the
22 affidavit?

23 A. I am.

24 Q. Have you personally reviewed all the recordings that are
25 referenced in this affidavit?

1 A. I have.

2 Q. And more specifically have you reviewed the recording of
3 each telephonic and face to face meeting between the defendant
4 and the cooperating witness and the undercover employees that
5 are summarized in that affidavit?

6 A. I have, yes.

7 Q. Have you reviewed the defendant's attack plans that are
8 referenced in the affidavit?

9 A. I have.

10 Q. In preparation for testifying today have you spoken to the
11 agents, other agents involved in the investigation and read
12 reports?

13 A. I have, yes.

14 Q. And based upon your preparation for testifying today and
15 your involvement in this investigation do you believe the facts
16 contained in that complaint affidavit are true and correct?

17 A. I do.

18 MS. SIEGMANN: Your Honor, at this time the
19 government offers Government Exhibit 1 as evidence.

20 THE COURT: Any objection?

21 MS. CONRAD: No.

22 THE COURT: So marked.

23 GOVERNMENT EXHIBIT NO. 1, ADMITTED

24 MS. SIEGMANN: I'm handing the witness another copy
25 of the complaint affidavit and I'm handing the original to Ms.

1 Belpedio.

2 THE COURT: You can hold that, Lisa, you can hold
3 that.

4 BY MS. SIEGMANN:

5 Q. Now directing your attention to January 7, 2011, did the
6 defendant meet with a cooperating witness on that day?

7 A. He does, yes.

8 Q. Was that the first recorded meeting between the
9 cooperating witness and the defendant?

10 A. It was.

11 Q. Have you reviewed that recording?

12 A. I have.

13 Q. Now I'm handing you what has been marked Government
14 Exhibit No. 2. Do you recognize that, Special Agent Davis?

15 A. Yes, I do.

16 Q. What is it?

17 A. It's the, it's a CD containing the consensual recorded
18 meeting on January 7, 2011 between the CW and Mr. Ferdaus.

19 MS. SIEGMANN: Now with the Court's--

20 THE COURT: I'm sorry, the date one more time, Agent
21 Davis?

22 THE WITNESS: It's January 7, 2011.

23 THE COURT: Thank you.

24 MS. SIEGMANN: With the Court's permission I'd like
25 to play an excerpt from that - well first I offer into evidence

1 Government Exhibit No. 2.

2 THE COURT: Any objection?

3 MS. CONRAD: No.

4 THE COURT: So marked.

5 GOVERNMENT EXHIBIT NO. 2, ADMITTED

6 MS. SIEGMANN: And with the Court's permission I'd
7 like to play an excerpt from that meeting.

8 MS. CONRAD: May I just ask whether what's been
9 introduced is the complete recording or is it just an excerpt?

10 MS. SIEGMANN: It's a complete recording.

11 MS. CONRAD: Thank you.

12 THE COURT: You may.

13 Hold on one minute, Ms. Siegmann.

14 PAUSE

15 MS. CONRAD: May I inquire, Ms. Siegmann, what page
16 of the transcript the excerpt starts on?

17 MS. SIEGMANN: I don't know the answer to that
18 question.

19 PAUSE

20 THE COURT: How is it indexed?

21 MS. SIEGMANN: It's the recording, Your Honor. On
22 the recording it starts at 13:55:16.

23 THE COURT: Does that help?

24 MS. CONRAD: No. I'll catch up. I might have to ask
25 you to pause so I can line myself up to where we are. Thank

1 you.

2 MS. SIEGMANN: I was introducing the transcript, Your
3 Honor.

4 THE COURT: Actually I had a more mundane matter.
5 Let's shut those drapes so I can actually see this thing.

6 PAUSE

7 THE COURT: That's great. Thank you, Lisa?

8 MS. SIEGMANN: Is that set?

9 THE COURT: Yeah that's good. Go ahead.

10 (TAPE PLAYED FOR THE COURT)

11 MS. SIEGMANN: The volume needs to be turned up.
12 Where's the--

13 PAUSE

14 MS. SIEGMANN: It's not coming on the--

15 PAUSE

16 MS. SIEGMANN: Sorry, Your Honor, we had this all set
17 up and somehow--

18 PAUSE

19 MS. SIEGMANN: Let me back up, Your Honor, for--

20 THE COURT: If you would please. Thank you.

21 MS. SIEGMANN: Sorry about that.

22 PAUSE

23 THE COURT: So just so I understand, Exhibit 2 - can
24 you just pause that for one minute. Exhibit 2 is only the
25 events of January 7th or are there going to be other dates?

1 MS. SIEGMANN: No, Your Honor, Exhibit 2, Government
2 Exhibit 2 is just the DVD from the one meet--

3 THE COURT: January 7th.

4 MS. SIEGMANN: --on January 7th of 2011--

5 THE COURT: Thank you.

6 MS. SIEGMANN: --Which Special Agent Davis testified
7 was the first recorded meeting between--

8 THE COURT: Okay. And that, I'm sorry, the hour and
9 minute on that again is what?

10 MS. SIEGMANN: Is, I'm playing from 13:55:20 to
11 14:04:59--

12 THE COURT: Thank you.

13 MS. SIEGMANN: --is what the - let me back it up a
14 little more.

15 (TAPE PLAYED FOR THE COURT)

16 BY MS. SIEGMANN:

17 Q. Was this the first time the defendant had met the
18 cooperating witness?

19 A. No.

20 Q. When did the cooperating witness first meet the defendant?

21 A. December 17, 2010.

22 Q. Was that meeting recorded?

23 A. It was not recorded.

24 Q. Why wasn't it recorded?

25 A. The FBI's common practice is to use the least intrusive

1 methods as they develop an investigation and in addition
2 trying to get an introduction between a cooperating witness and
3 a subject isn't guaranteed so on a first meeting like that
4 they're often not recorded.

5 Q. Was the cooperating witness debriefed by FBI agents after
6 the conclusion of this meeting?

7 A. Yes, he was.

8 THE COURT: By this meeting you mean 12/17?

9 MS. SIEGMANN: Yes, Your Honor.

10 THE COURT: Mmm-hmm.

11 BY MS. SIEGMANN:

12 Q. And according to the cooperating witness where did the
13 cooperating witness meet the defendant on December 17, 2010?

14 A. Where did they meet?

15 Q. Yes.

16 A. In a Mosque.

17 Q. And was there a conversation that took place outside the
18 Mosque?

19 A. Yes.

20 Q. According to the cooperating witness who initiated that
21 conversation?

22 A. Mr. Ferdaus.

23 Q. And can you tell us how that conversation came about?

24 A. Yes. The cooperating witness was in a discussion with a
25 third individual where they were discussing the cooperating

1 witness' former criminal history regarding weapons charges and
2 Mr. Ferdaus overheard that conversation and thus approached the
3 cooperating witness to discuss that further with him.

4 Q. And can you tell us what the cooperating witness said that
5 he discussed with the defendant at that time?

6 A. He discussed with him if there was an opportunity for the
7 cooperating witness to obtain guns or explosives for Mr.
8 Ferdaus.

9 Q. Did Mr. Ferdaus tell the cooperating witness at that point
10 in time why it was that he wanted guns?

11 A. Yeah, he had - wanted to get a movement going with regard
12 to some sort of a plan.

13 Q. Now as a result of the, that meeting on December 17, 2010
14 was this the next meeting with the, between the cooperating
15 witness and the defendant?

16 A. Yes, it was.

17 Q. And in the video I was having trouble pausing it because
18 of the technical issues but the conversation began with someone
19 saying I have the guns and the bombs.

20 A. Correct.

21 Q. Who was that speaking?

22 A. That was the cooperating witness.

23 Q. Okay. Now what is the defendant's educational background?

24 A. The defendant?

25 Q. Yes.

1 A. The defendant's educational background is he's a graduate
2 of Northeastern University in physics.

3 Q. In comparison to the defendant what is the cooperating
4 witness' educational background?

5 A. He did not graduate high school.

6 Q. Now as indicated in the complaint affidavit - well, the
7 cooperating witness has a criminal record; is that right?

8 A. That's correct.

9 Q. And could you briefly describe to the Court what his
10 criminal background entails?

11 A. The criminal background of the cooperating witness is
12 principally guns and gang activity and he has been charged and
13 prosecuted for weapons, for home invasion or larceny with
14 weapons. He also has a drug history as well. That's basically
15 it.

16 Q. Okay. And during the investigation of the defendant did
17 the cooperating witness commit any misconduct?

18 A. He did.

19 Q. And can you briefly describe that to the Court, please?

20 A. The cooperating witness took an item from a Radio Shack
21 store, actually stole an item from a Radio Shack Store during
22 this operation.

23 Q. Okay. And did that occur on February 11, 2011?

24 A. It did.

25 Q. Was that during a recorded meeting with the defendant?

1 A. Yes, it was.

2 Q. And at the conclusion of that meeting what did the
3 cooperating witness tell the agents happened with regards to
4 that item that he stole?

5 A. Right, the cooperating witness told the handling agents
6 that Mr. Ferdaus had purchased the item and had given it to him
7 and that he was in custody of that particular item.

8 Q. How did the FBI agents learn that that version of the
9 story wasn't actually correct?

10 A. Part intuitiveness plus they had the recorded, the
11 consensually recorded meeting which they could sort of see that
12 something wasn't quite as the cooperating witness had
13 described. So they further addressed it with the cooperating
14 witness. They asked him questions when he finally then
15 admitted to the fact that he had taken the item from the store.

16 Q. Before allowing the cooperating witness to conduct any
17 further meetings with the defendant did the FBI agents do
18 anything?

19 A. Yeah, they admonished, they admonished the cooperating
20 witness not to conduct any illegal activity again.

21 MS. CONRAD: I'm sorry, I couldn't hear that.

22 A. The agents admonished the cooperating witness to not
23 conduct any illegal activity while in the, you know, assisting
24 in this investigation.

25 Q. Was the cooperating witness provided immunity from

1 prosecution as a result of this shoplifting incident?

2 A. No.

3 Q. And how long after the shoplifting incident were the FBI
4 undercover employees introduced to Mr. Ferdaus?

5 A. A few weeks afterward.

6 Q. After the undercover employees were introduced how if at
7 all did the cooperating witness' role in the investigation
8 change?

9 A. The cooperating was, had limited interaction following
10 that. There were probably five meetings with, between the
11 cooperating, in which the cooperating witness was still
12 involved in meeting with the defendant one of which was also
13 attended by the undercover employees as well. So his, the
14 cooperating witness', you know, participation started to be
15 minimized at that point.

16 Q. And when was the last meeting that the cooperating witness
17 had with the defendant?

18 A. April 6th.

19 Q. After that was the, who took the primary role in the
20 investigation?

21 A. After April 6th in which the cooperating witness was no
22 longer involved in the investigation, it was all undercover
23 employees.

24 Q. As is customary with a cooperating witness were the
25 meetings between the cooperating witness and the target

1 recorded?

2 A. Yes.

3 Q. And with the exception of the first meeting that we were
4 disgusting a few minutes ago, the December 2010, were there any
5 other meetings that were unrecorded?

6 A. Yes, there was one on I think February 4th, 4th that was not
7 recorded.

8 Q. Why wasn't that recorded?

9 A. Because of a malfunction in the recording device.

10 Q. Were there meetings between the cooperating witness and
11 the defendant also surveilled?

12 A. Yes, they were.

13 Q. And was the cooperating witness provided instructions
14 prior to each meeting with the defendant and debriefed after
15 each meeting?

16 A. Yes, he was.

17 Q. I'm going to hand you Government Exhibit No. 3. Special
18 Agent Davis, do you recognize that document?

19 A. I do.

20 Q. And what is it?

21 A. It's the indictment of Mr. Ferdaus.

22 MS. SIEGMANN: All right, the government offers the
23 indictment for your consideration.

24 MS. CONRAD: Your Honor, I object. I mean the
25 standard boiler plate law that an indictment is not evidence of

1 anything. Certainly the Court has the indictment. The fact
2 that there's an indictment is a fact. I don't see how it's--

3 THE COURT: You know what, I'm going to take it but I
4 agree with you. I mean it's on the record. I did the
5 arraignment. I signed the complaint so I agree with you but I
6 am going to take it.

7 GOVERNMENT EXHIBIT NO. 3, ADMITTED

8 MS. SIEGMANN: I do have a few questions pertaining
9 to that indictment.

10 THE COURT: Go ahead.

11 MS. SIEGMAN: I actually think that it is relevant.

12 THE COURT: Go ahead.

13 BY MS. SIEGMANN:

14 Q. Special Agent Davis, looking at the charges in the
15 indictment, the charged conduct relates to activities and
16 statements by the defendant beginning in March 2011 after the
17 undercover employees begin meeting with him?

18 A. Could you rephrase or repeat the question please.

19 Q. Sure.

20 A. I didn't hear it.

21 Q. Do the charges in this indictment relate to the conduct
22 that occurred after the introduction of the undercover
23 employees in March 2011?

24 MS. CONRAD: Your Honor, I object. First of all it's
25 leading. Second of all, the indictment speaks for itself. And

1 third of all the first sentence is beginning in or about 2010.

2 THE COURT: Sustained.

3 BY MS. SIEGMANN:

4 Q. Is the cooperating witness at all mentioned in the
5 indictment?

6 MS. CONRAD: Objection, Your Honor, same issue. It's
7 not evidence that it--

8 THE COURT: Sustained. I'm going to let you do this,
9 I'm going to let you point me to that document whenever we get
10 to closings on this but I can read the document myself. It's
11 part of the record and I don't need him to tell me that stuff.

12 MS. SIEGMANN: Yes, Your Honor.

13 THE COURT: Ms. Conrad, when you make an objection
14 can you wait for me to ask you for one word rather than the
15 soliloquy from the banquet.

16 MS. CONRAD: I apologize.

17 THE COURT: Thank you. Next?

18 BY MS. SIEGMANN:

19 Q. Based upon your view of the recorded meetings, Special
20 Agent Davis, who did the defendant believe the undercover
21 employees were?

22 A. He believed they were members of Al-Qaida.

23 Q. How soon after meeting with the FBI undercover employees
24 did the defendant tell them about his plan to attack the
25 Pentagon?

1 A. He mentioned it in the very first meeting that he had
2 with him.

3 Q. And how many times over the course of this investigation
4 did the defendant talk to the undercover employees about this
5 plan?

6 A. In every meeting thereafter.

7 Q. In addition to discussing this plan with the undercover
8 employees did the defendant ever provide a written description
9 of his plan to the undercover employees?

10 A. Yes, he did.

11 MS. SIEGMANN: At this time I'm handing the witness
12 Government Exhibits No. 4 and 5.

13 BY MS. SIEGMANN:

14 Q. Special Agent Davis, those two documents I just handed
15 you, do you recognize them?

16 A. I do.

17 Q. What are they?

18 A. They are both attack plans provided by Mr. Ferdaus to the
19 undercover employees.

20 THE COURT: Can you identify them by number, please.

21 THE WITNESS: The - Exhibit No. 4 is an attack plan
22 provided by Mr. Ferdaus to the undercover employees on May 5,
23 2011. And Exhibit No. 5 is an attack plan provided to the
24 undercover employees by Mr. Ferdaus on June 9, 2011.

25 THE COURT: Thank you.

1 MS. SIEGMANN: And before asking you any questions
2 about them I'm going to actually hand you another set of copies
3 and give the original to the Court--

4 THE WITNESS: Okay.

5 MS. SIEGMANN: --so the Judge can follow along with
6 copies.

7 THE COURT: Are you moving them?

8 MS. SIEGMANN: Yes, Your Honor. The government moves
9 in the, Government Exhibit Nos. 4 and 5.

10 THE COURT: Any objection?

11 MS. CONRAD: No objection.

12 THE COURT: So marked.

13 GOVERNMENT EXHIBIT NOS. 4 and 5, ADMITTED

14 THE COURT: All right, so hold on one minute. I may
15 want to follow along with this.

16 PAUSE

17 THE COURT: Go ahead, Ms. Siegmann.

18 MS. SIEGMANN: Thank you, Your Honor.

19 BY MS. SIEGMANN:

20 Q. Special Agent--

21 THE COURT: Are these Bates numbered?

22 MS. SIEGMANN: Sorry, Your Honor?

23 THE COURT: Are these Bates numbered?

24 MS. SIEGMANN: They are not Bates numbered.

25 THE COURT: Okay. Thank you.

1 MS. SIEGMANN: Sorry.

2 BY MS. SIEGMANN:

3 Q. Special Agent Davis, could you please briefly describe
4 the May 5th plan to the Court, please?

5 A. Yes, it's a detailed plan regarding, it'd be basically a
6 summary entitled abstract of the plan. It's the attack plan on
7 both the Pentagon and the Capital building which are referred
8 to as the P building and the C building in the document in
9 which it's broken down in a very organized manner to discuss
10 the aircraft type to include specs on the aircraft and also
11 pricing autopilot hardware that would need to be obtained in
12 order for the aircraft to function as the plan describes and
13 hardware and aircraft configurations as well as software. In
14 addition there are pages in here which have detailed maps with
15 additions made to the maps by Mr. Ferdaus showing both launch
16 site locations and also the target locations of the U.S.
17 Capital and the Pentagon to include some flight plan, flight
18 route descriptions in here and then there are other photographs
19 which appear to have been either photocopied out of a book of
20 the Capital Building with an arrow that was added to the
21 photograph showing the impact point into the Capital Building
22 which also has a description below the photograph. Others
23 similar, very similar of the Pentagon which include two arrows
24 pointing to the Pentagon for impact points as described in the
25 plan. Then there are other pictures obtained apparently off of

1 the internet of the launch location which is sort of a golf
2 course in the D.C. area. And then included toward the back of
3 this entire package then are hardware and software printouts
4 off of the, printouts off of the internet regarding hardware
5 and software that might be required to construct the aircraft
6 for the attack.

7 Q. Was there, in that May 5, 2011 plan were there any
8 pictures or research done regarding grenades?

9 A. Yes, there are also a page in here with pictures with also
10 description paragraphs of each of the, of different types of
11 grenades that could be used.

12 Q. And Special Agent Davis, just can you, just - these
13 materials were they produced in hard copy to the undercover
14 employees?

15 A. No. It was produced in a thumb drive.

16 Q. Okay. And was that with respect to both plans, the May 5th
17 and May 6th, and the June 6th--

18 A. Correct.

19 Q. June 9th, excuse me.

20 A. The June 9th, correct. Both, both plans were presented to
21 the undercover employees via a thumb drive.

22 Q. Now did the undercover employees instruct the defendant to
23 produce such plans?

24 A. They did not.

25 Q. You just described in detail the May 5, 2011 plan. Have

1 you also reviewed the June 9th plan?

2 A. I have, yes.

3 Q. And can you tell us, briefly describe it and highlight the
4 differences between the two plans for the Court.

5 A. Mmm-hmm. It's basically the same plan, the same two
6 targets are described with similar photos and arrows and other
7 amendments made by Mr. Ferdaus to the photos regarding his plan
8 to attack those two sites, but the addition on the June 9th plan
9 he added a ground attack, a ground assault in addition to his
10 original plan which was merely aircraft flying with explosives
11 into those buildings. In the June 9th plan the ground assault
12 portion of his new plan included descriptions that the aircraft
13 flying into the Pentagon would essentially require that
14 Pentagon employees would evacuate the building and be corralled
15 into certain locations at which time the other individuals who
16 would be enlisted in this attack would gun them down with
17 automatic weapons and grenades. So basically the difference
18 between the first plan and the second plan was the ground
19 assault version of the plan.

20 Q. Between the time the May 5, 2011 plan and the June 9, 2011
21 plan were created by the defendant had he conducted any
22 surveillance?

23 A. He had.

24 Q. Okay. Where did he conduct surveillance?

25 A. He conducted surveillance at the Pentagon and the Capital

1 Building, all of the locations basically described in his
2 plan.

3 Q. And were pictures that he had taken during the
4 surveillance included in the June 9th plan that he provided to
5 the undercover employees?

6 A. They were.

7 Q. Now did the undercover employees ever try to discourage
8 the defendant from following through with this attack plan?

9 A. They did, yes.

10 Q. Can you please describe that to the Court?

11 A. They, on at least over 30 times during the meetings that
12 they had had with Mr. Ferdaus had addressed with him his,
13 whether he desired to continue on with his plan. They just,
14 they wanted to make sure that he was, you know, committed,
15 committed to this plan. And each time that they asked if he
16 was continuing to do this he indicated, yes, this was all he
17 wanted to do, that was his mission, that's what he was here
18 for.

19 Q. And did they at all, did they at any point tell him that
20 he did not have to go through with this?

21 A. Yes, they did.

22 Q. How many times did they tell him that?

23 A. Ahh, many occasions throughout the meetings that they had
24 had with him. They had 18 meetings with him, consensual
25 meetings with him and practically every meeting they had they

1 had indicated that to him.

2 Q. And how did the defendant respond again?

3 A. He responded saying that this was his plan and he was
4 going to continue with it, he was committed to doing this.

5 Q. Did undercover employees ever question the defendant's
6 motives as to why he wanted to do this?

7 A. They did, yes.

8 Q. And what did the defendant say?

9 A. He basically - the reference I can recall from all of the
10 monitorings that I viewed was that he wanted to cut the head
11 and the heart and the tail out of the snake which he referred
12 to the United States as the snake.

13 Q. Now during the meetings did the undercover employees ever
14 inquire as to the defendant's ability to kill individuals and
15 whether he was willing to do so?

16 A. Yes, they did. And he indicated he was willing to do so,
17 yes.

18 Q. When was the last time that the undercover employees told
19 the defendant, you don't have to go through with this, there's
20 no shame in backing out?

21 A. On September 20, 2011.

22 Q. And he was arrested on September 28th; is that right?

23 A. September 28th he was arrested, yes.

24 Q. During the defendant's meetings with the undercover
25 employees did the defendant ask them for any assistance in his

1 plans?

2 A. Yes.

3 Q. And what types of assistance did he request from the
4 undercover employees?

5 A. He requested material, resources and funding to complete
6 the plan, the attack plan.

7 Q. During this investigation did the defendant ever mention
8 the possibility of making homemade explosives to the
9 cooperating witness?

10 A. Yes, he did.

11 Q. Similarly did the defendant mention the possibility of
12 making his own homemade explosives to the undercover employees?

13 A. Yes, he did.

14 Q. And how did that subject come up in conversation, do you
15 recall?

16 A. The one I recall is that they were discussing whether the
17 grenades would be an appropriate explosive to use and he
18 indicated that perhaps a homemade explosive would be better and
19 provide more explosive power than the grenades would.

20 Q. How did the undercover employees react to the defendant's
21 suggestion that he make homemade explosives?

22 A. They told him they didn't want him to do that because it
23 was a, they didn't want him to injure himself or any others but
24 obviously also as undercover employees there was a public
25 safety issue, a real world public safety issue that they were

1 concerned with that if he had started to experiment with
2 making his own explosives that somebody would get hurt. For
3 public safety reasons they advised him not to do that.

4 Q. During the defendant's, I'm sorry, and during the
5 defendant's meetings with the undercover employees did the
6 defendant ever reveal when he first began planning this attack
7 against the United States?

8 A. Yes. He said long before he'd ever met them, at least a
9 year before he'd met the undercover employees he'd been
10 planning this.

11 Q. Did he describe any instances as to - strike that.

12 In those discussions with the undercover employees, did he
13 mention who he discussed this plan with originally?

14 A. Yes, he had mentioned an individual from Dorchester, which
15 is an area in Boston, who he'd discussed this plan with and he
16 also indicated that the individual with whom he'd discussed the
17 plan had suggested that perhaps they just conduct an attack on
18 a recruiting center, a military recruiting station at which
19 time Mr. Ferdaus said yes, that's a viable plan but he would
20 prefer to do something bigger than that.

21 Q. During the defendant's meetings with the cooperating
22 witness and the undercover employees did the defendant mention
23 the possibility of attacking any other targets in addition to
24 the Capital and the Pentagon?

25 A. Yes. On at least one of the meetings he had mentioned the

1 possibility of attacking a subway and also a military base in
2 Colorado.

3 Q. Did the defendant ever explain why he felt it was
4 necessary to attack the United States?

5 A. It was an evil land, the United States is evil, and an
6 enemy to Islam.

7 Q. Now during the course of the investigation were emails
8 obtained from the defendant's Gmail account pursuant to a
9 search warrant?

10 A. Yes.

11 Q. I'm now showing you Government Exhibits No. 6 and 7.

12 THE COURT: Did you say 6 and 7?

13 MS. SIEGMANN: Six and 7, Your Honor.

14 BY MS. SIEGMANN:

15 Q. Do you recognize those emails, Special Agent Davis?

16 A. Yes, I do.

17 Q. I'm actually going to - and are those the emails from the
18 defendant's Gmail account?

19 A. Yes, they are.

20 MS. SIEGMANN: The Government moves to admit
21 Government Exhibit Nos. 6 and 7.

22 MS. CONRAD: Objection.

23 THE COURT: What's your objection?

24 MS. CONRAD: Relevance.

25 THE COURT: Can you give me an offer of proof,

1 please?

2 MS. SIEGMANN: Your Honor, it establishes that long
3 before, well before he met the cooperating witness that he felt
4 that the United States Army was a - (unintelligible - #3:02:42)
5 - army, a non-believer army and that he thought al-Qaida was
6 the defender of innocence and that they should do, Muslims need
7 to do whatever they could and sacrifice to ensure Sharia law.

8 THE COURT: How does that help me on the issue of
9 detention?

10 MS. SIEGMANN: I was actually anticipating that the
11 defense, and I can wait until redirect for this, defense is
12 going to inquire as to or try to establish that there's some
13 entrapment here and that he did not have the intention to
14 actually attack the United States but for the actions of the
15 cooperating witness and undercover employees.

16 THE COURT: Sustained.

17 BY MS. SIEGMANN:

18 Q. When did the defendant first mention the possibility of
19 constructing a cell phone detonator?

20 A. He first mentioned it in, frankly the videotape we just
21 watched on January 7th he had mentioned using a cellular
22 telephone as a means to detonate an explosive but he didn't
23 call it a detonator in that video.

24 Q. He said it was easy to make detonators, do you recall
25 hearing that?

1 A. Say that, I'm sorry, say that again?

2 Q. Did he use the words it's easy to make detonators?

3 A. Yes, he did.

4 Q. And during the course of the investigation how many times
5 did the defendant mention detonators during the conversations
6 with the cooperating witness and the undercover employees?

7 A. Virtually every, every meeting.

8 Q. How did the defendant describe how he intended - strike
9 that.

10 At some point the defendant started building detonators;
11 is that right?

12 A. Correct.

13 Q. And how did the defendant describe how he intended that
14 those detonators be used?

15 A. He intended that they be used in the creation of an IED,
16 an improvised explosive device. He also indicated that they
17 could be used in the aircraft, at one point that they could be
18 used in the aircraft as well.

19 Q. Was there a specific target that he wanted the detonators
20 to be used against?

21 A. Yes, United States soldiers, forces overseas.

22 Q. Now directing your attention to the meet that occurred on
23 June 27, 2011, do you recall that meeting?

24 A. June 27th?

25 Q. Yes.

1 A. Yes.

2 Q. Did the defendant meet with the FBI undercover employees
3 on that date?

4 A. Yes, he did.

5 Q. And during that meeting did the defendant provide the
6 undercover employees a cellular phone detonation device?

7 A. He did.

8 Q. After giving the undercover employees this detonation
9 device was there any discussion about any--

10 A. I'm sorry, let me correct - did you say June 7th or June
11 9th?

12 Q. June 27th.

13 A. Oh, June 27th. Yes, June 27th, yes.

14 Q. On June 27th--

15 A. Yes.

16 Q. --okay, just to make sure - so--

17 A. Right.

18 Q. There's a lot of meetings, a lot of recordings--

19 A. Yes.

20 Q. --in this case. So if you at all are confused about dates
21 please stop me again. So on June 27, 2011 you indicate, just
22 testified that the defendant provided a detonation device to
23 the undercover employees?

24 A. That's correct.

25 Q. After providing this device to them was there any

1 discussion regarding a prior device that was provided,
2 supplied to the undercover employees?

3 A. Yes, there was.

4 Q. And can you describe that to the Court?

5 A. Yes, the undercover employees indicated that the previous
6 devices that or device that was provided by Mr. Ferdaus was in
7 fact successful in killing U.S. soldiers abroad.

8 Q. Do you recall how many he, they indic--

9 A. I think he said three killed and five wounded, something
10 like that, in Afghanistan or Iraq, Iraq.

11 Q. What was the defendant's reaction to this news?

12 A. He was excited about the news.

13 Q. And turning now to page 34 of Government Exhibit No. 1--

14 THE COURT: Hold on one second.

15 PAUSE

16 THE COURT: What page?

17 MS. SIEGMANN: Thirty-four, Your Honor.

18 THE COURT: Thank you.

19 BY MS. SIEGMANN:

20 Q. Paragraph 64. And then at that same meeting did Mr.
21 Ferdaus state this is exactly what I wanted and I feel so
22 blessed to feel that I'm seeing the fruits of my labor?

23 MS. CONRAD: Objection to leading, Your Honor.

24 THE COURT: Yeah. Stop leading please.

25 BY MS. SIEGMANN:

1 Q. Special Agent Davis, can you read that first sentence,
2 that'd be the last sentence of paragraph 64, Ferdaus stated?

3 A. Yes. "This is exactly what I wanted and I feel so
4 blessed. I feel that I'm seeing the fruits of my labor. I
5 want to work with you guys and I want to hit the snake on the
6 tail and I want to choke it right in the head. The world will
7 never be the same."

8 Q. Special Agent Davis, was that in relation to the
9 detonation devices that he was building and providing to people
10 he believes to be al-Qaida?

11 A. Yes, it was.

12 Q. Directing your attention to September 20, 2011, on that
13 date did the defendant meet with one of the FBI undercover
14 employees?

15 A. He did.

16 Q. During that meeting did the defendant make a training
17 video on how to make cell phone detonators for the brothers
18 overseas?

19 A. Yes, he did.

20 Q. Have you watched that video?

21 A. I have.

22 Q. How long is the video?

23 A. It's about 20 minutes long.

24 Q. And what does the defendant do on this video?

25 A. He disassembled, he takes the back off of a cellular

1 telephone with a screwdriver then he proceeds to connect wires
2 via soldering from the speaker of the cell phone such that
3 those wires could then be used to connect to other components
4 of an IED. And then he - while doing that he is speaking as if
5 he was giving a lecture or training on how, what he was doing
6 throughout the process so that others could view it and learn
7 from it.

8 Q. Who filmed the defendant while he was constructing this
9 cell phone detonation device?

10 A. One of the undercover employees.

11 MS. SIEGMANN: I'm sorry; I'm having some technical
12 difficulties.

13 BY MS. SIEGMANN:

14 Q. Okay, I'm handing the witness what has been marked
15 Government Exhibit No. 8. Special Agent Davis, do you
16 recognize what that is?

17 A. Yes, I do.

18 Q. What is it?

19 A. It is a CD containing the video we just discussed that the
20 undercover employee took of Mr. Ferdaus constructing the cell
21 phone detonator, the training video.

22 MS. SIEGMANN: At this time the government moves to
23 admit Government Exhibit No. 8, Your Honor.

24 MS. CONRAD: No objection.

25 GOVERNMENT EXHIBIT NO. 8, ADMITTED

1 THE COURT: Is this the type of information you want
2 on the public record?

3 MS. SIEGMANN: We're not actually going to, we're
4 only going to play two excerpts from it for you and this is for
5 your inspection.

6 THE COURT: We're not about to have a tutorial on the
7 public record.

8 MS. SIEGMANN: No, Your Honor.

9 THE COURT: Thank you.

10 MS. SIEGMANN: We're just going to have the first
11 minute and then a few of the last--

12 THE COURT: And again do you have the minute, hour
13 minute on that for me, please?

14 MS. SIEGMANN: Well what we're going to play is the
15 001, the first file on the CD.

16 THE COURT: Okay. Thank you.

17 MS. SIEGMANN: And it'll be the first minute of that
18 and then we'll play the last segment which is 006.

19 THE COURT: Thank you.

20 PAUSE

21 (TAPE PLAYED FOR COURT)

22 BY MS. SIEGMANN:

23 Q. Special Agent Davis, you've watched this before, the first
24 words that you just heard Mr. Ferdaus say can you tell the
25 Court what he just said?

1 A. I actually can't.

2 Q. You couldn't hear it?

3 A. No.

4 Q. Okay.

5 MS. SIEGMANN: Well, Your Honor, you'll have it in
6 chambers so you can actually play it.

7 (TAPE PLAYED FOR COURT)

8 MS. SIEGMANN: And at this point we're going to stop
9 it so that we don't have any - and we'll turn it to the last--

10 THE COURT: And this is file which number?

11 MS. SIEGMANN: This is file 006, Your Honor.

12 THE COURT: Thank you. So the files are 001 and 006?

13 MS. SIEGMANN: Yes, that we're showing.

14 (TAPE PLAYED FOR COURT)

15 BY MS. SIEGMANN:

16 Q. And Special Agent Davis, this portion right here is,
17 you've watched the last segment. What does he do in this last
18 segment?

19 A. In this segment here?

20 Q. Yeah.

21 A. He's showing that the, once he's configured the cell phone
22 with the wires that are sticking out of the phone that dialing
23 the number of the phone or setting off the ring tone would in
24 fact induce a current through those wires.

25 Q. So he's not revealing any of his, the step by step. He's

1 just showing, demonstrating that it would work?

2 A. Correct.

3 MS. SIEGMANN: So with that caveat we're going to
4 play this.

5 (TAPE PLAYED FOR COURT)

6 BY MS. SIEGMANN:

7 Q. Special Agent Davis, we've been referring to the
8 undercover employees as undercover employees and that's how
9 they're referred to the complaint affidavit. Are they're
10 special agents of the FBI?

11 A. No, they are not.

12 Q. Can you describe how they're employed?

13 A. Mmm-hmm. They're long term law enforcement task force
14 officers of the joint terrorism task force who have been
15 specially certified as undercover employees for the FBI.

16 Q. Now turning back to the video for a second. Are you
17 familiar with improvised explosive devices?

18 A. Yes.

19 Q. And how common is it that cell phones are used to
20 construct such devices?

21 A. It's very common.

22 Q. Now turning to September 28, 2011. Was that the date the
23 defendant was arrested?

24 THE COURT: I'm sorry, say--

25 MS. SIEGMANN: September 28, 2011.

1 A. Yes, that's the date he was arrested.

2 BY MS. SIEGMANN:

3 Q. Prior to his arrest did the defendant meet with the
4 undercover employees?

5 A. Yes, he did.

6 Q. What happened during that meeting?

7 A. Well when the, the undercover employees' vehicle they had
8 with them the plastic C4 explosives, grenades, six automatic
9 Ak47 assault rifles. It was at that time in the van that they
10 pulled over and they showed Mr. Ferdaus what was in the bags or
11 the containers in which they had those devices and weapons.

12 Q. Were these the items that the defendant had requested from
13 the undercover employees?

14 A. Yes, they were. In fact during that meeting they again
15 asked him what his shopping list I suppose was and he
16 reiterated before they showed him what they had with them that
17 he was looking for 24, five pounds of C4 explosives, six
18 grenades, I guess or nine grenades and six AK47 assault rifles.

19 Q. Were any photographs taken during this meeting?

20 A. While in the van or during the day?

21 Q. During the meeting?

22 A. During - yes, there were.

23 MS. SIEGMANN: I'm handing the witness what has been
24 marked Government Exhibits No. 9, 10 and 11.

25 BY MS. SIEGMANN:

1 Q. Special Agent Davis do you recognize those photographs?

2 A. Yes, I do.

3 Q. And were those the photographs that you were just
4 referring to a few minutes ago that were taken on the day of
5 the defendant's arrest?

6 A. Yes, they are.

7 MS. SIEGMANN: Your Honor, the government moves to
8 admit those photographs into evidence.

9 THE COURT: Ms. Conrad?

10 MS. CONRAD: No objection.

11 THE COURT: So marked.

12 GOVERNMENT EXHIBIT Nos. 9, 10 AND 11, ADMITTED

13 MS. SIEGMANN: In a moment Ms. Belpedio is going to
14 switch us so we can actually show them on the screen.

15 PAUSE

16 THE COURT: Do you have a second set?

17 MS. SIEGMANN: I do, Your Honor.

18 THE COURT: Oh great. Thank you. And they are
19 marked?

20 MS. SIEGMANN: Yes, Your Honor.

21 THE COURT: Thank you.

22 BY MS. SIEGMANN:

23 Q. I'm showing you what has been admitted as Government No.
24 9, Special Agent Davis.

25 A. Yes.

1 Q. Do you see that on the screen there?

2 A. I do, yeah.

3 Q. Can you tell us what we're looking at?

4 A. Yes, it's a photograph inside the Framingham storage
5 facility, a room that was rented by Mr. Ferdaus, and he is
6 standing next to one of the undercover employees holding, each
7 of them holding AK47 assault rifles which were delivered to him
8 by the undercover employees.

9 Q. Now you mentioned a storage unit in Framingham. Who
10 rented that?

11 A. Mr. Ferdaus rented that.

12 Q. Did he rent it under his real name?

13 A. He did not.

14 Q. What name, do you remember what name he rented it under?

15 A. Mr. Ramos I believe.

16 Q. Now I'm showing you Government Exhibit No. 10. Could you
17 tell us what we're looking at here?

18 A. Photograph taken by one of the undercover employees again
19 in the same location. This time both Mr. Ferdaus and the
20 undercover, other undercover employee are, you know,
21 shouldering the automatic rifles.

22 Q. And lastly, Government Exhibit No. 11. Can you tell us
23 what we're looking at hear?

24 A. Yes. It's a photograph again taken in the same, on the
25 same date, September 28th, in the storage facility in Framingham

1 and it shows, it was taken by one of the undercover employees
2 and it's a photograph of Mr. Ferdaus placing what he believes
3 to be plastic C4 explosives within the F86 RC aircraft, radio
4 controlled aircraft.

5 Q. Now you mentioned what he believed to be C4 explosives.
6 Of the 25 pounds how much was actually actual C4 explosives as
7 opposed to inert?

8 A. There was 1.25 pounds of actual C4 explosives within the
9 whole delivery.

10 Q. Now during the defendant's meetings with the undercover
11 employees did he ever indicate where he planned to go after he
12 successfully launched his attacks on the Capital and the
13 Pentagon?

14 A. Yes. His desire was to travel to Afghanistan.

15 Q. For what reason?

16 A. To train, participate or be a trainer, train with or be a
17 trainer of individuals in training camps in Afghanistan.

18 Q. Now Special Agent Davis, during the investigation did the
19 undercover employees question the defendant about the
20 feasibility of his plan?

21 A. Yes, they did.

22 Q. And what was his response to the undercover employees?

23 A. His response was that he feels, felt that that was the
24 plan he devised and he felt that it was very, within his power
25 it was very feasible.

1 Q. And based upon your experience do you believe Mr.
2 Ferdaus' idea was feasible?

3 A. I do. I do believe he could've accomplished what he was
4 setting out to do.

5 Q. Do you believe this plan would've cause loss of life and
6 destruction of property?

7 A. Yes, I do.

8 MS. SIEGMANN: Your Honor, if I could just have a
9 moment?

10 THE COURT: Mmm-hmm.

11 PAUSE

12 MS. SIEGMANN: Your Honor, the government has no
13 further questions.

14 THE COURT: Ms. Conrad?

15 MS. CONRAD: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MS. CONRAD:

18 Q. Good afternoon, Agent Davis.

19 MS. CONRAD: May I inquire from here, Your Honor, or
20 do you prefer me at the podium?

21 THE COURT: No, I think wherever you're comfortable.
22 Just, Ms. Belpedio's got to make sure we're picking you up,
23 that's all.

24 MS. CONRAD: Okay.

25 THE CLERK: Just bring the--

1 THE COURT: There you go. We can catch it. We're
2 good. We're good.

3 MS. CONRAD: Thank you.

4 BY MS. CONRAD:

5 Q. Agent Davis, my name is Miriam Conrad and along with Ms.
6 Byrne I represent Mr. Ferdaus. Before these pictures, Exhibits
7 9 and 10 were taken, do you have any evidence that, or are you
8 aware whether Mr. Ferdaus ever held a gun in his hands?

9 A. Was there any evidence that he had done so?

10 Q. Yes.

11 A. No.

12 Q. In fact he on several occasions told the informant that he
13 didn't know anything about guns, right?

14 A. That is correct.

15 Q. And he told him he needed to practice, right?

16 A. That's correct.

17 Q. And in fact the way he's holding the gun in Exhibit 9
18 isn't really the way somebody would normally hold a gun. He's
19 holding it tucked under his arm?

20 A. People can carry guns in that fashion. In Exhibit 10 he
21 is holding it in a, fashion.

22 Q. So the only gun he ever touched to your knowledge--

23 A. Mmm-hmm.

24 Q. --during the entire time he was under the government's
25 scrutiny was the guns that the government gave him?

1 A. To my knowledge.

2 Q. And the only explosives he ever had in his possession were
3 the explosives that the government gave him?

4 A. To my knowledge that's correct.

5 Q. And those explosives and those guns and that storage
6 locker were all acquired with government funds, right?

7 A. The guns and other, and the explosives were in the
8 possession of the government so they weren't--

9 Q. Okay.

10 A. --purchased.

11 Q. They were all provided by the government?

12 A. That is correct.

13 Q. So Mr.--

14 THE COURT: Ms. Conrad by storage locker--

15 MS. CONRAD: I'll explain that. Sorry.

16 THE COURT: Okay. Thank you. Go ahead.

17 BY MS. CONRAD:

18 Q. So these pictures, 9, 10 and 11 were taken at a storage
19 locker in Framingham, correct?

20 A. That's correct.

21 Q. And that was a storage locker that was as you've mentioned
22 or alluded to rented by Mr. Ferdaus, correct?

23 A. That's correct.

24 Q. And the money for that rental was provided by the
25 government?

1 A. That's correct.

2 Q. Of course he didn't know it was provided by the
3 government, right?

4 A. That's correct.

5 Q. And the trip he took to Washington D.C. that was funded by
6 the government?

7 A. That is correct.

8 Q. The government bought him the plane ticket, right?

9 A. That's correct.

10 Q. And as far as you were aware and certainly from everything
11 that you've reviewed Mr. Ferdaus didn't have any funds of his
12 own during this whole time; is that right?

13 A. He did. He had had a job during that time which he quit.
14 So he did have some of his own money.

15 Q. Did he tell the informant that when the informant at one
16 point asked him if he had any money he said just change?

17 A. He did at one point say that, yes.

18 Q. And didn't he also say that he couldn't drive his car
19 because he owed \$100 in parking tickets and he hadn't paid, or
20 some kind of fines and he hadn't paid those off?

21 A. He did allude to that but the vehicle was also broken
22 down. It wouldn't run.

23 Q. So he didn't have a car, right? Is that right?

24 A. That's correct.

25 Q. He didn't have any money; is that right? Or he didn't

1 have much money?

2 A. Correct.

3 Q. And he certainly didn't have the kind of money that one
4 would need to buy this kind of explosive fire power, right?

5 A. He did not.

6 Q. And he didn't have a cell phone during part of this
7 investigation; is that correct?

8 A. During the initial part he did not have a cell phone.

9 Q. And he at certain times didn't even have access to a
10 laptop; is that right?

11 A. At certain times, that's correct.

12 Q. And isn't it true that before this investigation even
13 started there were indications that Mr. Ferdaus had psychiatric
14 problems?

15 A. I am not aware of that.

16 Q. You're not aware of that?

17 A. Before this investigation, no, I'm not aware of that.

18 Q. So are you aware for example of an Ashland police report
19 dated April 3, 2010 that described Mr. Ferdaus as being
20 disoriented?

21 A. I am aware of that.

22 Q. Okay. So disoriented to you wouldn't be an indication of
23 psychiatric problems?

24 A. Not necessarily, no.

25 Q. Well, I understand not necessarily but these reports were

1 reviewed before the government ever made contact with Mr.

2 Ferdaus, correct?

3 A. That's correct.

4 Q. The federal government had access to that April 3, 2010
5 report, correct?

6 A. That's correct.

7 Q. And I apologize, that actually I think referred to an
8 event that occurred on March 31, 2010, correct?

9 A. If, I - correct. Yes, as I recall.

10 Q. And on a later occasion the FBI actually interviewed Mr.
11 Ferdaus, right?

12 A. That's correct.

13 Q. And that was before he met the informant, right?

14 A. That's correct.

15 Q. And he met him, excuse me, he was interviewed in his home
16 in the presence of his father on October 12, 2010, right?

17 Excuse me, 21st.

18 A. Correct.

19 Q. And at that time he was described as agitated, correct?

20 A. Correct.

21 Q. And very nervous, correct?

22 A. Correct.

23 Q. And visibly shaken, correct?

24 A. Correct.

25 Q. And it was less than two months later that the FBI sent

1 the informant to the Worcester Mosque in an effort to make
2 contact with Mr. Ferdaus, correct?

3 A. Yes.

4 Q. And you said that that meeting - and in fact when the
5 informant went to the mosque - he was shown a photograph of Mr.
6 Ferdaus before he went, right?

7 A. That's correct.

8 Q. So he was targeting Mr. Ferdaus, correct?

9 A. He was going in to attempt to identify, he had never seen
10 him before, so based on the photograph he was going in to see
11 if he could identify him and meet with him, yes.

12 Q. And you told us that that meeting was not recorded, right?

13 A. That's correct.

14 Q. It could've been recorded?

15 A. It could have been.

16 Q. But it wasn't?

17 A. It was not.

18 Q. And that was a decision that the FBI made not to record
19 that meeting, right?

20 A. Yes. It's standard.

21 Q. I'm sorry?

22 A. It's standard for their practice.

23 Q. Well, and do you know what the reason for that is?

24 A. Yes, as I indicated it's FBI procedure, not hard and fast
25 procedure but basically start with a least intrusive method of,

1 using least intrusive tools and then ramping up the
2 sophistication of the tools used in an investigation.

3 Q. I don't understand that because there were occasions when
4 the informant wore a wire inside, as it were, inside the
5 mosque, right?

6 A. Correct.

7 Q. So how would that be intrusive? It's not showing. No one
8 knows he's making a recording, right?

9 A. That's correct. It's just the terminology used in the FBI
10 for using sophisticated techniques while conducting an
11 investigation.

12 Q. Well it wouldn't interfere with the informant's ability to
13 speak to anyone.

14 A. No, that's correct.

15 Q. So it very well could have been recorded, right?

16 A. It could have been, yeah.

17 Q. So what instead because the FBI chose not to record that
18 meeting the only way that you know or the only basis for your
19 testimony that Mr. Ferdaus approached the informant was the
20 fact that the informant told you that?

21 A. Told the handling agents that, yes, that's correct.

22 Q. Right. I'm sorry; you were not even involved in the
23 investigation at that time, right?

24 A. Not at that time, no.

25 Q. Okay. And at the time that the informant told the FBI

1 agents that that was in December of 2010, correct?

2 A. Correct.

3 Q. Now the informant had previously been terminated as an FBI
4 informant; isn't that right?

5 A. Yes, he's not been used an informant for quite some time.

6 Q. Well, not only had he not been used, he had been
7 terminated in May of 2010?

8 A. I'm not sure of the exact date.

9 Q. Well--

10 A. But, yes, he--

11 Q. --are you aware of the fact that during the previous time
12 when he was working as an FBI informant he was seen by his
13 handler, Agent Wotenberg (ph), walking down the street in
14 Worcester and was asked what he was doing and he admitted that
15 he was actually, while working as an FBI informant, selling
16 drugs?

17 A. I am aware of that incident.

18 Q. And so that would be committing a crime while he's an
19 informant, right?

20 A. That's correct.

21 Q. So this Radio Shack shoplifting incident that you told us
22 about that wasn't the first time he was caught committing a
23 crime while he was on the FBI's payroll, right?

24 A. That's correct.

25 Q. And it also certainly wasn't the first time he was

1 admonished not to commit crimes while on the FBI payroll?

2 A. That's correct.

3 Q. So apparently the first time, actually the May 2010 time
4 wasn't even the first time he was admonished not to commit
5 crimes while on the FBI payroll; is that right?

6 A. That's correct, and that's a standard procedure for any,
7 any cooperating witness as well.

8 Q. Well I'm sorry; maybe I'm not making myself clear. It
9 wasn't the first time he committed a crime while on the FBI
10 payroll, was it?

11 A. I can't recall.

12 Q. Are you aware that in June of 2009 Mr., excuse me, strike
13 that, the informant was arrested by Worcester police?

14 A. Yes.

15 Q. And are you aware that that time he was on the FBI
16 payroll?

17 A. I was aware that he was on the FBI payroll. I don't
18 recall if it was during that exact time.

19 Q. And he was charged with possession of heroin, correct?

20 A. Correct.

21 Q. And trespassing, correct?

22 A. Correct.

23 Q. And those charges were dismissed?

24 A. They were.

25 Q. And in fact the informant is not just someone with a

1 criminal record. He's a drug addict, right?

2 A. He has substance abuse issues, yes, he does.

3 Q. Well substance abuse issues or he's a drug addict? Heroin
4 addict?

5 A. He does--

6 MS. SIEGMANN: Objection, Your Honor. This is not an
7 expert on what an addict versus--

8 THE COURT: Sustained.

9 MS. SIEGMANN: --a substance abuse--

10 THE COURT: Sustained.

11 MS. SIEGMANN: --problem.

12 BY MS. CONRAD:

13 Q. Has he told the FBI that he's a heroin addict?

14 A. Umm, I believe so. Yes.

15 Q. So, okay.

16 A. I mean I believe he's told them he has a problem with
17 heroin. The FBI is aware of his heroin problem.

18 Q. And have you worked with witnesses before with drug abuse
19 problems?

20 A. Yes.

21 Q. And are you aware of people who use heroin occasionally or
22 would you say it's more common for someone who uses heroin to
23 use heroin consistently?

24 A. It's more common they use it consistently.

25 Q. And so this informant in June of 2009 admitted to using

1 heroin and he was placed at the behest I take it of the FBI in
2 a detox program, correct?

3 A. Correct.

4 Q. And after a week he came out and he went right back to
5 work for the FBI, correct?

6 A. I'm not sure about that fact.

7 Q. And, but Agent Wotenberg would be clear on that, right?

8 A. Other agents would, yes, would be.

9 Q. Well Agent Wotenberg was his handler, right?

10 A. Correct.

11 Q. And the FBI later discovered that from the time, from at
12 least September of 2009 through at least September of 2010 the
13 informant was using heroin?

14 THE COURT: I'm sorry; give me those dates again
15 please.

16 MS. CONRAD: Sure, September of 2009 until September
17 2010 the informant was using heroin.

18 THE COURT: Thank you.

19 A. Well based on the information he was during that time
20 using heroin. I don't know if during the entire time he was
21 using heroin.

22 BY MS. CONRAD:

23 Q. Was he ever drug tested by the FBI?

24 A. No, not to my knowledge.

25 Q. So even though he had this history of drug use and drug

1 sales and committing crimes while on the FBI payroll when he
2 was enlisted in I take it shortly before December 17, 2010 to
3 conduct Mr. Ferdaus he wasn't drug tested?

4 A. No, he was not, not to my knowledge.

5 Q. And during this entire investigation he wasn't drug
6 tested?

7 A. Not to my knowledge.

8 Q. And in fact there's some indication that he was using
9 heroin during the course of this investigation, isn't there?

10 A. Umm, I'm not aware of it.

11 Q. Well isn't it true that on one of the recordings he said
12 I'm sick, I need a gram?

13 A. I recall he was sick, he said he was sick on one of the
14 recordings, yes.

15 Q. And he said I need a gram?

16 MS. SIEGMANN: Objection.

17 THE COURT: Overruled.

18 A. I--

19 THE COURT: Overruled, that means you may answer.

20 BY MS. CONRAD:

21 Q. I want a gram of dope. I feel real sick. Isn't that on
22 one of the recordings?

23 A. I do recall he mentioning being sick. I don't recall
24 those exact words.

25 Q. So the FBI didn't, no one in the FBI said, gee, why are

1 you saying I need a gram of dope when you're supposed to be
2 working as an FBI informant in a supposedly terrorism
3 investigation? No one's concerned that this guy's dope sick?

4 MS. SIEGMANN: Objection. The witness said he did
5 not recall--

6 THE COURT: Wait. Stop. Stop. Stop.

7 Sustained. Let's move, let's keep moving.

8 BY MS. CONRAD:

9 Q. During the course of this investigation was there ever any
10 effort made to test the informant to determine whether he was
11 using illegal drugs?

12 A. Not that I'm aware of.

13 Q. And was his conduct, apart from the surveillance of
14 certain scheduled meetings, was his conduct monitored in any
15 way?

16 A. We were aware of telephonic communications he was making
17 and we were monitoring methods of communication, electronic
18 methods of communication that he may be undertaking but his
19 physical activities, I'm unaware of whether they were monitored
20 more closely.

21 Q. So when you told Ms. Siegmann on direct examination that
22 there were no meetings that were not recorded you don't know if
23 that's true, do you?

24 A. Physical meetings, no, I'm not aware of those.

25 Q. I understand you're not aware of them but you wouldn't be

1 aware of them unless the informant told you?

2 A. That's correct.

3 Q. In other words you didn't follow him 24-7?

4 A. That's correct.

5 Q. So he could have been meeting with Mr. Ferdaus without
6 being recorded and you wouldn't know that, right?

7 A. That would be possible.

8 Q. And in fact there were many phone calls that were not
9 recorded; is that correct?

10 A. Between the--

11 Q. Between Mr. Ferdaus and the informant?

12 A. Umm, I'm not aware. I didn't review anything, any of the
13 reports that were not recorded.

14 Q. I'm sorry?

15 A. I didn't review any, except for the two reports we already
16 addressed I didn't review any other reports that the handlers
17 may have drafted regarding meetings with the CW.

18 Q. Oh, I'm sorry. I thought you reviewed all the reports in
19 this case?

20 A. That were addressed in this, in the indictment and in the
21 complaint.

22 Q. Oh. So you haven't reviewed all of the reports regarding
23 all of the contacts between the informant and Mr. Ferdaus; is
24 that correct?

25 A. Apart from the other, the meeting in December and the

1 meeting in, the unrecorded meeting on February 4th, I've
2 reviewed all of those.

3 Q. So the one I was asking you about with respect to I want a
4 gram of dope, I feel real sick, that was January 20th, a
5 recording made on January 20th. You haven't reviewed that?

6 A. Yes, I did review that.

7 Q. You did review that?

8 A. I did, yes.

9 Q. So do you know why it was decided - at the time - strike
10 that.

11 As of September 2010 this informant was not on the FBI
12 payroll; is that correct?

13 A. September 2010. I don't know the exact dates of when he
14 was being handled or not.

15 Q. Do you know when he was reinstated?

16 A. I don't know that.

17 Q. Do you know whether he was reinstated for this
18 investigation?

19 A. As a result of this investigation?

20 Q. For the purpose of this investigation?

21 A. Umm, I believe he was, I believe so. I believe so.

22 Q. And do you know how or why it was decided that despite his
23 previous misconduct and the fact that he was selling I think it
24 was crack cocaine while on the government's payroll and buying
25 drugs for himself from targets of FBI investigations he would

1 be a reliable person to conduct a terrorism investigation?

2 A. Well he was considered actually a very productive source
3 because of all the work he had accomplished in those drug
4 investigations and his ability to perform well during those
5 investigations.

6 Q. So as long as he was productive the FBI wasn't terribly
7 concerned about his criminal activity?

8 A. Oh no, no, no. The FBI is always monitoring that.
9 They're various methods apart from the drug testing that you
10 alluded to that I'm not aware of accomplishing those types of
11 things but the cooperating witness is always interviewed
12 following a meeting, is always surveilled during the meetings
13 and communications are continually being established during an
14 investigation.

15 Q. Well you told us about the February 11th incident and you
16 said that that was discovered because actually the agents were
17 aware from the recording that the informant had actually
18 shoplifted this item?

19 A. Well it was also - that was a component of what raised
20 their attention to the fact that something had happened. It
21 was also in their debrief of the source that they felt that
22 this, you know, the story he had portrayed to them is what had
23 actually happened during a meeting wasn't accurate. They
24 reviewed the consensually monitored meeting and then they also
25 saw that there was something amiss to it and that's when they

1 then confronted him very shortly after that meeting.

2 Q. Now were you involved with the investigation at that time?

3 A. No, I was not.

4 Q. So you weren't present at that meeting?

5 A. I was not.

6 Q. Do you know if the FBI paid the store owner back for that
7 stolen item?

8 A. I'm not aware of what you're referring to. Oh, oh, oh,
9 I'm sorry, that stolen item. No, I'm not aware - I don't
10 believe they've paid the store.

11 Q. Did they report it to the local police?

12 A. Did the FBI report it to the local police?

13 Q. Yes.

14 A. Not that I'm aware of.

15 Q. Did the FBI tell the informant to go back and return the
16 item or pay for it?

17 A. Not that I'm aware of.

18 Q. And in fact it was completely unnecessary for him to steal
19 this item because if it was part of the investigation the FBI
20 would have paid him for it, right?

21 A. It was unnecessary for him to steal the item.

22 Q. And did he ever explain why he felt compelled to commit a
23 crime for no apparent reason while on an FBI surveillance tape
24 and while working for the FBI?

25 A. Again, after speaking with the handling agent it was

1 presumed that, it was relayed to the CW by Mr. Ferdaus that
2 that component was something that, I forget what they referred
3 to it as, was something that he required, a relay, it was a
4 relay, that he, Mr. Ferdaus required and they didn't purchase
5 it so the CW, the source stole it from the package that they
6 looked at while in the store and wanted to provide it to the
7 FBI as proof that this was something he had wanted.

8 Q. Why didn't he just pay for it?

9 A. I don't know the answer to that.

10 MS. SIEGMANN: Objection.

11 THE COURT: Sustained.

12 BY MS. CONRAD:

13 Q. In fact, let me just go back for a moment to, and I'm
14 sorry to skip around but I know my time is short here so I just
15 want to cover a few things, although we probably won't finish
16 today, but have you reviewed the tape recording that was made
17 on January 11th by the informant in a meeting with Mr. Ferdaus?

18 A. Yes.

19 Q. And at the end of that tape recording the informant says,
20 of course after Mr. Ferdaus has left, this dude is f'in crazy,
21 except he didn't say f'in, right?

22 A. That's correct.

23 Q. And that was after Mr. Ferdaus shared his thoughts about
24 how he wanted to drop a bomb on the Capital and the Pentagon
25 and launch a ground attack and take over the whole place; is

1 that right?

2 MS. SIEGMANN: Objection, Your Honor, relevance to
3 the fact that the CW thought this guy, you know, he claimed was
4 a little crazy. What does that have to do with dangerousness?

5 THE COURT: Overruled. You may have this. Rephrase
6 the question. Re-ask the question please.

7 BY MS. CONRAD:

8 Q. So that comment which I think you'd already agreed with me
9 he made--

10 A. Mmm-hmm.

11 Q. --was after Mr. Ferdaus on that tape was talking about how
12 he wanted to drop a bomb on the Capital and on the Pentagon and
13 do a ground attack and "take the whole place over," right?

14 A. That's correct.

15 Q. And Mr. Ferdaus as of January 11th and even as of,
16 certainly prior to the time he met the undercovers, had no
17 means to drop bombs and launch a ground attack and take over
18 the entire place, did he?

19 A. By means what are you describing?

20 Q. Money, people--

21 A. Not--

22 Q. Explosives?

23 A. No, I don't believe so.

24 Q. Arms? In fact repeatedly the informant said to him who do
25 you have, right?

1 A. Correct.

2 Q. And he didn't have anybody, right?

3 A. Correct.

4 Q. He just kept saying, well there's you and me and maybe
5 there's one other guy I can talk to, right?

6 A. Correct.

7 Q. So this plan that was introduced as I think Exhibit 5
8 which talks about different teams, right?

9 A. Mmm-hmm.

10 Q. There were no teams?

11 A. At the time of the plan, no, there were no teams.

12 Q. There were never any teams?

13 A. During this investigation there were no teams, correct.

14 Q. There was never anyone recruited to take part in a ground
15 attack, correct?

16 A. Except for the undercover employees.

17 Q. Right.

18 A. Correct.

19 Q. And in fact this discussion about how he was going to get
20 on a plane and go to Afghanistan, correct, after taking out the
21 Pentagon and the Capital with multiple AK47s, that wouldn't
22 have happened, would it?

23 MS. SIEGMANN: Objection.

24 THE COURT: Sustained.

25 BY MS. CONRAD:

1 Q. Well, well - I'll move on. And going back to the issue
2 of mental health, isn't it also true, I think you told Ms.
3 Siegmann that Mr. Ferdaus never indicated any reluctance and
4 never indicated that he wanted to back out but in fact in
5 August of 2011, just about a month before he was arrested,
6 isn't it true that Mr. Ferdaus told the undercovers that he is
7 filled with anxiety and hasn't been leaving the house, correct?

8 A. Correct.

9 Q. And he told them that he was having intrusive thoughts,
10 correct?

11 A. Correct.

12 Q. And he told them he was depressed?

13 A. Correct.

14 Q. And he told them he was starting to take medication?

15 A. Correct.

16 Q. And he told them that they might have to find someone
17 else?

18 A. I don't recall that statement, no.

19 Q. Didn't he tell them that he was not able to follow through
20 on the plan right now?

21 A. I, I don't recall that statement, no.

22 Q. Didn't he say we'll have to put the plan in storage until
23 the end of the month and then decide what to do?

24 A. I, I don't recall.

25 Q. And these were statements, statements about feeling

1 depressed and anxious and intrusive thoughts; these were
2 statements that he made over not in just one isolated
3 conversation but in a series of conversations during that
4 month, right?

5 A. I believe there were two, two distinct meetings where that
6 was mentioned, yes.

7 Q. And earlier - these are phone calls. Did you listen to
8 the phone calls?

9 A. I did listen to the phone calls that were addressed here,
10 yes.

11 Q. And going back, sorry about jumping back, in fact the
12 first time the informant met Mr. Ferdaus he described to agents
13 as having "wild eyes"?

14 A. Correct.

15 Q. And isn't it also true that in February of 2011 there were
16 two police reports from local police departments regarding Mr.
17 Ferdaus' odd behavior?

18 A. Correct.

19 Q. And in one of those he was described as disheveled,
20 correct?

21 A. Correct.

22 Q. And in another one a caller in Hopkinton on February 11th,
23 the same day as the Radio Shack incident, called police and
24 said there was a man in the road who wouldn't move and appeared
25 to have wet his pants?

1 A. That's correct.

2 Q. And that person was identified as Mr. Ferdaus, correct?

3 A. Correct.

4 Q. And so those incidents which were right in the middle of
5 this investigation coupled with the comments of the undercovers
6 in August 2011 didn't that give the FBI concern about the
7 mental health of the target of this terrorism investigation?

8 A. It's a consideration, but it's not a concern. Our concern
9 is for public safety and even individuals, and I'm not saying
10 that we believed he had mental health issues, but even
11 individuals with mental health issues are a danger and a threat
12 to the public.

13 Q. And this investigation lasted over a period of some nine
14 months, right?

15 A. Correct.

16 Q. So apparently the FBI's concern about public safety was
17 not so great that it didn't feel that it was safe to allow Mr.
18 Ferdaus to remain in the community from December of 2010
19 through September of 2011 when he was arrested?

20 A. There was no indication other than when Mr. Ferdaus
21 mentioned constructing his own explosives or considering
22 constructing his homemade explosives at which time the
23 undercover employees told him they didn't want him to do that.
24 Other than those, than that, those times I don't believe there
25 were any other indications that he was an immediate threat to

1 the public.

2 Q. Now focusing again on the mental health issues didn't the
3 undercovers tell him that he needed to try to blend in more?

4 A. That's correct.

5 Q. And that he - odd behavior would make him not an effective
6 operative in a terrorism operation, correct?

7 A. Not so much odd behavior but behavior that was so extreme
8 that he would be detected by other security people in airports
9 and elsewhere.

10 Q. And he had been acting in an extreme way; is that correct?

11 A. He had been, yes.

12 Q. And in fact he had recounted to an informant that he had
13 gotten into nearly a violent argument with someone on the
14 street in New York because he refused to move out of the way--

15 A. That's correct.

16 Q. --on the sidewalk?

17 A. That's correct.

18 Q. Right? So he wasn't, he was acting in many ways in an odd
19 and agitated manner, right?

20 A. Umm, yes, or an extreme manner. There are other words you
21 could use to describe it.

22 Q. That would draw attention to himself?

23 A. That's correct.

24 Q. And it did draw attention to himself, right?

25 A. Yes, it did.

1 Q. With, for example, the calls to the Ashland and the
2 Hopkinton police?

3 A. That's correct.

4 Q. And--

5 MS. CONRAD: May I have a moment, please, Your Honor?

6 THE COURT: Ms. Conrad, would this be a good point to
7 suspend?

8 MS. CONRAD: Could I just check with Ms. Byrne for a
9 moment please?

10 THE COURT: Mmm-hmm.

11 PAUSE

12 MS. CONRAD: I have nothing further at this time,
13 Your Honor, just for purposes of suspending but I'm not
14 complete with my examination.

15 THE COURT: I understand. So as I have this we are
16 going to form up again on Monday November 14th at 10 a.m. is
17 that what everybody else has?

18 MR. CABELL: Yes, Your Honor.

19 MS. SIEGMANN: Yes, Your Honor.

20 MS. CONRAD: Yes.

21 MS. SIEGMANN: Can we quickly see you at sidebar
22 though to discuss just a logistic issue for November 14th?

23 THE COURT: Sure. Does it need to be on the record?

24 MS. SIEGMANN: No.

25 THE COURT: Okay. Good. Agent Davis, you can step

1 down. Thank you.

2 THE WITNESS: Thank you, sir.

3 WITNESS EXCUSED

4 THE COURT: Come on up. We are--

5 SIDEBAR CONFERENCE - INAUDIBLE

6 THE COURT: All right, we're in recess.

7 (Court adjourned 3:58:02)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

I, Maryann V. Young, court approved transcriber, certify that the foregoing is a correct transcript from the official digital sound recording of the proceedings in the above-entitled matter.

/s/ Maryann V. Young

November 10, 2011

MARYANN V. YOUNG
Certified Court Transcriber
(508) 384-2003